

The following comments are submitted on behalf of **The New York Public Library**, ("NYPL") in reference to the Federal Communications Commission ("FCC") Notice of Proposed Rulemaking ("NPRM") regarding the Universal Service Program. (CC Docket No. 02-6, FCC 02-8)

## **Application Process**

### Eligible Services – Eligibility Lists

NYPL does not consider the use of a pre-approved list of products and services on the Form 471 an improvement to the operation and efficiency of the Program. Rather we consider that the list would unnecessarily limit the applicants' flexibility in applying for services and products that fall generally under telecommunications eligibility guidelines.

In certain instances, potentially eligible items do not fit neatly into a particular item description on the eligible service list. Likewise newly introduced telecommunications products that meet eligibility guidelines may not have been included in the eligible service list in time for the application process. Would these eligible items be denied because they did not fall within a specific description on the list? Denial of items that did not fit neatly into the list or were newly introduced would invariably lead to greater numbers of appeals and the time-consuming paperwork and review for both applicants and program administrators. Additionally it puts a greater burden on the applicant who already has difficulty interpreting the complicated program requirements and nuances of telecommunications equipment eligibility.

Regardless of which item on the list each request falls under, the SLD will have to review the Item 21 detail anyway in order to determine whether the actual request meets the eligibility requirements, so it doesn't seem likely that it would save much administration time or play a major role in preventing the funding of ineligible services. Instead it would require applicants to fill out an additional piece of information, reduce the flexibility of the program, and run the risk of a large increase in everyone's time spent on appeals.

NYPL is in favor of the suggestion to allow interested parties the ability to provide input to the Administrator on an ongoing basis in regard to what specific products and services should be eligible. Such a mechanism would invigorate the Program, ensuring that it remains relevant and meaningful to both the telecommunications sector and to the technological infrastructure and educational needs of public libraries and schools. We would suggest an annual submission and review process in order to keep up with the fairly quick timeline on which technology progresses.

In terms of suggestions for handling services and equipment that are eligible only if used in certain ways, we suggest loosening these restrictions. For example, making services conditional based on who in a school or library is using the service is burdensome to track and separate out for both applicants and administrators. Everyone employed by schools and libraries ultimately works toward educational purposes. Singling out certain employees as less or more beneficial to the educational process is not an efficient or valuable use of anyone's time and only further complicates an already complicated administration process for all involved.

#### Eligible Services – WAN, Wireless & Voice Mail

It is NYPL's opinion that leased WAN service should continue to be a Priority One item, however equipment and infrastructure costs included in the lease price should be broken out and applied for under Priority Two Internal Connections. If routers or other equipment required to make use of the WAN connections is being bundled into the leases, then the result has been unfair to institutions that purchase routers under Internal Connections. This is not an equitable distribution of funds.

Wireless services should have the same eligibility as wired services. For example, wireless telephone service should be as eligible as POTS and wireless LANs should be as eligible as internal wiring. Enhanced services that provide content, such as roaming Internet access via cellular phones or cellular modems, should not be eligible.

Similarly NYPL agrees that voice mail should be made an eligible service. Voice mail provides a telecommunications service equivalent to e-mail, which is an eligible service under current rules. Voice mail is to POTS what e-mail is to the Internet. If one form of mail

is funded under the program, both should be. The cost and time of separating out voice mail as ineligible is an unnecessary administrative burden nor is it equitable.

#### Eligible Services – Internet Access Bundled with Content

Discounts for Internet Access when bundled with content should be provided if the provider of this bundled content is the most cost-effective provider of Internet access. Full discount should be given on the entire bundled charge, without deducting the cost of the content, if not offered separately from the Internet access. Breaking out the content component creates an unnecessary administrative burden and is a waste of Program funds if applicants must use a higher priced vendor for Internet Access to avoid the bundling problem.

#### Review of Requests Including Eligible and Non-Eligible Services

In the review of requests that turn out to contain both eligible and ineligible components, a 50% policy would seem fairer to applicants than the existing 30% policy. As mentioned before, the nuances of telecommunications equipment eligibility is complicated and sometimes difficult to determine for both the applicant and the reviewer. Is it fair to penalize the applicant more so than the reviewer? It certainly wouldn't seem so for smaller libraries and schools that are unable to devote full-time staff and resources to the administration of the Program. Additionally, the reviewers have to review each submission in its entirety anyway. It seems unlikely that there is very much difference in effort between determining if either 30% or 50% of the request is ineligible. The burden should be split equally.

The 30 percent processing benchmark also contributes to an excess of paperwork and administrative time on the part of both applicants and Administrators. Applicants take the conservative approach of making separate requests for each technology item, so that a decision by SLD reviewers that a particular item is ineligible would not affect the other technology items on the request. This is particularly true for Internal Connections, where the SLD Eligible Services List frequently provides no more guidance than stating a service is eligible conditional upon use. This increases the number of FRN's submitted every year, increasing administrative costs to all parties and reducing efficiency.

#### Compliance with the Americans with Disabilities Act

NYPL is committed to making its facilities and services accessible to all users, including people with disabilities. NYPL believes that the current notice provision included in Form 471

serves as an important reminder to applicants of the potential applicability of the Americans with Disabilities Act ("ADA") and other related statutes to services purchased with USD. NYPL does not believe that it is necessary or appropriate for a certification of compliance to be added to the form. Moreover, such a certification would be of little value unless it could be verified and enforced. Noting that there are already enforcement mechanisms in place under ADA and related statutes, NYPL respectfully submits that the Administrator and Commission are not in the best position to evaluate compliance, which evaluation often may involve both legal interpretations and fact-specific analysis. Adding a certification requirement and related verification and enforcement procedures would place an unnecessary burden on the Administrator and the Commission, as well as the applicant, and would not be an efficient use of the Program's resources.

### **Post Commitment Program Administration**

#### **Choice of Payment Method**

We would argue that the applicant should have the right to make the determination as to whether reimbursement is received through the BEAR process or through discounts. Since it is the applicant who will be audited and must keep detailed records and justification, it should be the applicant's decision to determine which reimbursement method best suits its accounting, tracking, and record-keeping requirements. Likewise, since the provider is receiving full cash payment for its services or products in either situation, there should be no reason it cannot accommodate either the request for cash reimbursements or discounts.

In terms of deadlines for vendors to remit reimbursement checks to applicants, either 10 or 15 days seems a reasonable time period to turn checks around while at the same time inducing vendors to process transactions in a timely manner. Twenty days would lend less urgency to the situation.

In many instances, the issue of check reimbursement from vendors has been a problem for NYPL. It can take months for vendors to send checks, and considerable time is spent following up with vendors to secure this payment. There should definitely be a fine or penalty for holding onto money owed to the Library, otherwise there is little incentive for vendors to reimburse within a reasonable time period. They are, in effect, stealing the Library's money, by earning interest on money owed us. In some instances, we have experienced vendors that attempt to make it very difficult for us to receive cash rebates back on past payments

and instead try to insist on giving us a discount on future services with them in lieu of the check they have received from the SLD. This is an inappropriate response by Providers, as applicants are under no obligation to do business with a particular vendor in the future.

The whole process often turns into an unnecessary and time-consuming burden involving continual requests to vendors in order to receive our reimbursement. Would it not be more efficient to send the reimbursement check directly to the Library? Reimbursements will have already been verified and approved by the vendor in the BEAR form and doing so would substantially reduce administrative burdens for libraries and cut out unnecessary steps in the whole process. Considering the current economic climate of the telecommunications industry, it might also be more prudent to send checks directly to applicants rather than putting reimbursements at the risk of bankruptcy proceedings.

#### Equipment Transferability

A requirement that equipment purchased with USD funds not be replaced or transferred to a different site within 3 years (and cable every 10 years) seems reasonable. However, restricting funding to individual sites for Internal Connections once every 3 years would not be productive. Often we submit requests for wiring of a particular section of a location (ie. the Children's room) because there is current funding available to renovate that area and not the entire branch library. We would then be prevented from wiring other sections within the library in a high-poverty index area over the next two years. Alternatively, it would place a burden on the institutions to accurately predict (or overbuild) to anticipate the additional connections, which may be required during that 3-year cycle.

NYPL is opposed to the proposal to deny Internal Connections discounts to any entity that has already received discounts on Internal Connections within a specified time period of years regardless of the intended use of the new Internal Connections. This approach would put impractical planning burdens on libraries, put larger institutions that share services across entities at a disadvantage (see our previous comments to the NPRM regarding the Universal Service Program in May 2001, CC Docket No. 96-45, FCC 01-143), and add yet another administrative burden of separating out the 89 entities that make up NYPL and keeping track of which years each one is eligible or ineligible to apply for Internal Connections.

## **Appeals**

### Appeals Procedure

NYPL agrees with extending appeals deadline for schools & libraries to 60 days instead of 30 days. Sixty days is more reasonable. Often items for appeal come up at times when Library staff is busy working on other deadlines and requirements for the Universal Service Program. For example, in December 2001 we received our award for Year 4 of the program. This was the same time that we were preparing our application for Year 5 of the program, making it difficult to respond in the 30 day time period to any items we felt warranted appeal without jeopardizing the quality of our next year's application.

Using the postmark date as the date of compliance for appeal deadlines is also much easier and predictable to manage for applicants than the Administrator's receipt date. It will cause less stress for applicants who no longer have to worry that the appeal arrived at the SLD by the required date via a sometimes unpredictable postal service. Alternatively, it will save libraries money, since they won't have to FedEx as much documentation to ensure arrival by a specific date.

### Funding of Successful Appeals

It is NYPL's opinion that appeals should be funded at full discount levels and not pro-rated based on remaining funds in an appeal reserve. We agree that it would be unfair to treat successful appellants differently from applicants who were awarded funding initially. It would, in effect, be equivalent to making libraries pay for misinterpretations on the part of the Administrator. If funds in the corresponding year are not available in the appeal reserves, funds should be taken from the next year. Often, it is not exactly known how much is left in current year funding anyway, since applicants have several months after the program year ends in which to submit their requests for reimbursement. Lowering an award on that basis may be premature as well as unfair to the applicant.

## **Enforcement Tools**

### Independent Audits

Requiring applicants to pay for an audit when the SLD suspects fraud appears very one-sided, particularly if the suspicion is incorrect. This would place an unfair expense on applicants, leaving them to bear the costs of an Administrator's unsubstantiated impressions. It is entirely unreasonable for audited entities to bear the expense of an audit. On the other

hand, if fraud is suspected and uncovered, the applicant should pay a fine, which could then be put toward a fund for audits and other enforcement measures. Certainly those who repeatedly fail audits should be barred from the program for at least one year. Applicants should not be fined for non-compliance when violations are minor, inadvertent, or not explicitly outlined in widely published guidelines for audit or in Form 471 instructions. To aid libraries and schools in meeting documentation requirements, specific guidelines outlining those requirements in a centralized text (available on-line) should be provided. This would potentially reduce the number of institutions with audit exceptions and improve operation of the program.

#### Prohibitions on Participation

It is our impression that funds many times remain unused because applicants are being asked to make estimates of costs and needs in some cases up to almost a year and nine months in advance. With such large time lags, it can be difficult to determine exact quantities or specific model parts needed. It is in the applicant's interest to estimate up on the side of caution rather than risk not covering all of the funding needs. Also, if there were greater flexibility in terms of model numbers, prices, comparable equipment, etc. it would be easier to use the money in conjunction with inevitably changing needs and newly introduced but comparable products.

#### **Unused Funds**

##### Reduction of Unused Funds

The suggestion to reduce the level of unused funds by awarding more than is available each year seems to be a reasonable way to handle the issue of undisbursed funds. Returning undisbursed funds to contributors does not make sense, particularly in light of previously mentioned concerns that not enough funds are available to cover appeals. Similarly, every year there are more requests for Priority Two awards than there are funds available. To return funds to contributors would seem a violation of program goals when there are billions of dollars in requests from eligible libraries and schools that go unfunded.

#### **Revising or Eliminating Outmoded Rules**

It would be easier for applicants to use their awards and administer the program if the service substitution requirements were less stringent. Resubmitting entire portions of the Form 471 application just to change from ten six-port modules to seven eight-port modules or to switch

from a discontinued model number to a new model number is not an efficient use of time. Applicants should have the flexibility and discretion to make these minor changes in accordance with the criteria that have been established without having to spend both their time and the Administrator's time attending to the unnecessary additional paperwork. This would improve the operation of the program by creating more flexibility and efficiency.

## **Procedural Matters**

### Paperwork Reduction Act Analysis

In terms of reducing paperwork, NYPL was pleased with the on-line application process for Year 5. The process was slightly quicker for the applicant in terms of input time and gave NYPL greater peace of mind in knowing that it had met all the basic data entry requirements. It also appears, so far, to have dramatically improved the review time of our application on the Administrator's side of things. The process could use some minor enhancements for large applicants (ie. the ability to manipulate entries in Blocks 4 and 5 so that they are arranged in alphabetical or numerical order and are thereby easier to look-up and manage).

Further suggestions would include, the increased ability to submit all forms on-line and the ability to check the status of those forms on-line as well.

Mary Upchurch  
Manager, Universal Service Program  
Information Technology Group  
The New York Public Library